SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok | Saturday 5th February, 2005 | No. 41

GOVERNMENT OF SIKKIM
EXCISE (ABKARI) DEPARTMENT
GANGTOK

No.16 /Ex(Abk)/ **Dated: 2.2.2005.**

NOTIFICATION

In exercise of power conferred by clause (j) of section 77 read with Section 27 of the Sikkim Excise Act, 1992 (2 of 1992), the State Government hereby makes the following rules namely:-

CHAPTER – I

PRELIMINARY

Short title, extent and commencement.

1. (1) These may be called the Sikkim Excise (Licensing for Foreign Liquor Bar Shop) Rules, 2005.
(2) They extend to the whole of Sikkim.
(3) They shall come into force on the date of their publication in the Official Gazette.

Definitions.

2. (1) In these rules, unless the context otherwise requires;
(a) "Act" means the Sikkim Excise Act, 1992;
(b) "Foreign Liquor" means -
(i) Brandy, whisky, rum, vodka, gin, liqueurs, cordial, bitters and wines or mixture containing any of the liquor aforesaid;
(ii) beer, ale, porter, cider, sherry and other similar portable fermented liquors;
(c) Liquors, Liqueurs and beer;(i) "Duty Paid Foreign Liquor" means foreign Liquor on which – duty leviable under the Tariff Act, 1934 or the Sea custom Act, 1962, or the excise or countervailing duty under the Act has been paid and includes foreign liquor, which is exempted from such duty;
(d) "form means form appended to these rules;
(e) "licence" means a licence granted these rules;
(f) "licensed premises" means premises in respect which a licence has been issued under these rules;

(g) "Licensee" means an individual, a firm, a company incorporated under Registration of Companies Act, Sikkim, 1961 whom a licence under these rules for the retail sale of foreign liquor has been granted.

(2) Words and expressions not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

CHAPTER - II
GRANT OF LICENCE

Application for licence.

3. Any individual, firm and company registered under the Registration of Companies Act, Sikkim, 1961 desiring to obtain Excise Licence for Foreign Liquor Bar Shop shall apply in Form I appended to these rules to the Commissioner of Excise.

Consideration of Application.

4. On receipt of the application in Form I as referred to in rule (3), the particulars and other information as furnished by the applicant shall be verified and scrutinized by the Officers authorized by the Commissioner of Excise and thereafter the said Officers shall submit the verification report in Form II.

Eligibility criteria for obtaining the licence and for becoming the Bar Man.

5. The Excise licence for Foreign Liquor Bar Shop shall be granted only to the bonafide resident of the State of Sikkim. The applicant should be in a possession of Trade Licence issued by UD and HD Department for operating a hotel/ restaurant as the case may be. This shall apply mutatis-mutandis for appointment of Barman of the licensee.

Issue of Settlement Order.

6. (1) The Commissioner after considering the verification report as referred to in rule (4) above, and after satisfying himself that the premises proposed for locations of the shop for selling foreign liquor are in conformity with the provisions of the Act, rules and instructions issued by the Government or the Commissioner in this behalf from time to time, may inform the applicant of the decision and issue the settlement order in Form III on payment of requisite fees as Licence Fee as prescribed by the Government by Notification and security deposit of the equivalent amount:

Provided that if the applicant in whose favour the settlement order with instruction as prescribed in Form III therein fails to comply within 7 (seven) days of the receipt of intimation, it shall automatically be treated as cancelled.

Location of the shop.

(2) The location of the shop shall be as prescribed by the Government by Notification.

Temporary Licence on Special occasion.

7. Temporary Licence on Special Occasion namely Maghe Sankrati Mela, seasons of Hot Spring, Namsung Mela, Gumpa Mela, etc. etc. shall be issued on daily basis fee as prescribed by notification from time to time.

Tenure of Licence.

8. The tenure of licence shall be for a block of 4 (four) financial years and the block year shall commence from 1.04.2005.

Issue of duplicate Licence.

9. If the original licence is lost, a duplicate may be issued on payment a fee of Rs.50/- (Rupees fifty) only unless for a special reason the Commissioner considers that the fee should be waived.

Renewal of Licence.

10. The Licence shall be renewed during the last week of March every year after the payment of annual licence fee as prescribed by notification. The renewal of Excise Licence can be denied in case of any violation the terms & and conditions laid down in these Rules.

Foreign liquor not to be sold in sealed bottles.

11. Foreign liquor shall be sold only pegs of 60 ml./ 30 ml. The measuring pegs shall be as per the provision of Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

Sources of supply

12. The foreign liquor required for sale under the licence shall be obtained from the warehouse of licenced distributor/sub distributor/retailer.

Liquor to be sold at the licensed premises.

13. The foreign liquor shall be sold only at licensed premises to bonafide resident of the State.

Drinking allowed only in licensed premises.

14. The person in charge of the licensed premises shall allow drinking of liquor only in the licenced premises. In case of over drunken customer, who create disturbances to other in the licensed premises, the licensee should report to the Officer-In-Charge of the nearest police station.

No provision of separate Godown.

15. Stocking of liquor shall be allowed only in licensed premises.

Hygienic condition and provision of Toilets.

16. Proper hygienic condition shall be maintained in the licenced premises and clean toilet facilities within easy reach of the customer shall be provided.

Restriction on sale of Foreign Liquor.

17. The licensee shall not sell foreign liquor to the following categories of persons, namely:-

(a) lunatic or insane persons;
(b) person who is in an intoxicated state;
(c) person known or suspected to be involved in disturbance of law and order.
(d) person who is under the age of eighteen years;
(e) students either of school or college; and
(f) the Armed Forces of the Union, members of Police Force or any other personnel in uniform.

Selling price for 60 ml./ 30 ml. to be declared.

18. The foreign liquor shall sell in 60-ml./ 30-ml. Peg and selling price per peg shall be printed in the menu which shall be made available to the customer.

Regulation of business of licensee through Barman.

19. (1) A holder of licence of foreign liquor bar shop shall carry on his business under the license either personally or through Barman duly authorised by him in this behalf by a written application in Form IV alongwith three copies

of passport size photographs and granted Barman registration certificate in Form V duly signed by the Commissioner or the Excise Officers authorised by the Commissioner. If more than one Barman is proposed to be appointed, separate application with relevant particulars are to be submitted.

2) A licensee shall not authorize any of the following persons as his Barman, namely :-

(a). persons below eighteen years of age.

(b). persons suffering from any infection or contagious disease;

(c). persons of unsound mind;

(d). persons who in the opinion of the Commissioner are of bad character;

(e). persons whose Barman registration certificates or licenses have previously been cancelled;

(f). persons convicted of any offence; or

(g). women, with or without remuneration, without the previous permission in writing to the Commissioner :

Provided that on any reason the Commissioner can order the withdrawal of Barman registration, the Barman registration certificate shall forthwith be withdrawn.

(3) The holders of a bar licence shall keep in the licensed premises an up-to-date list showing the names of all authorised barman and display excise licence duely showing the working hours in a prominent position within the licenced premises. The licensee shall also display at entry point of hotel/ restaurant the word "Foreign Liquor Bar" alongwith the name of the Hotel or restaurant as the case may be.

(4) The licensee shall keep in the licensed premises a book in such form as prescribed by the Commissioner. The accounts shall be clearly and correctly written daily as prescribed in Form VI. These accounts shall be kept open for inspection by the Commissioner or any other Officers empowered under section 58 of the Act.

(5) The licensee shall submit such returns and operate the shop during such hours as may be prescribed by the Commissioner.

(6) The licensee shall produce for inspection his licence on demand by the Commissioner or any other officers authorised to do so.

(7) The licensed premises and stock of foreign liquor contained therein shall at all times be open to inspection by the Commissioner and any other Officers empowered under section 58 of the Act.

(8) The licensee shall, when called upon by any excise officers not below the rank of a Sub-Inspector, Excise empowered by the Commissioner or any Excise Officer empowered under section 58 of the Act, give an explanation in writing regarding any irregularity detected at his licensed premises and shall furnish any information regarding the management of the said premises and shall answer all reasonable question to the best of his knowledge and belief. He shall also on demand allow an inspecting officer to take without payment samples of liquor for analysis.

(9) The licensee shall not sell, transfer or sublet his right of selling foreign liquor conferred upon him by the licence nor shall he in connection with the said right enter into an agreement or arrangement which is of the nature of a lease. If any question arises as to whether any agreement or

arrangement is of the nature of a lease, the decision of the Commissioner on such question shall be final and binding on the licensee.

(10) The licensee shall receive no other article but money in sale for any liquor, the sale of is covered by the licence.

(11) The licensee shall close his shop when ordered to do so by any District or Sub-Divisional Magistrate or Superintendent of Police by notice in writing for such period as such Magistrate or Superintendent of Police may think necessary for the preservation of the public peace and shall also keep his shop closed when ordered to do so by any Magistrate or any Police officer above the rank of Inspector in the event of occurrence and apprehension of riot or unlawful assembly in the vicinity of the shop. The licensee shall keep his shop open barring following days:-

Days when the shop to be kept closed.

20. (a) 'Dry Days', declared by the Government by notification.
(b) 'General Election or by-election as per the guidelines of the Election Commission of India and State or local election conducted by statutory authority covering the area of the location of the shop.
(c) Days declared by the Government to remain closed on account of proximity of the troops or for other emergent reason.During the day/days when the shop is to be kept closed, the licensee shall display a board with the inscription of "**BAR CLOSED**" in bold at prominent place in the licensed premises.

Display of publicity materials and hoardings of liquor outside the licensed premises.

21. Excepting the display of boards as prescribed under sub rule (3) of rule 18, the licensee shall not display any publicity materials and hoardings outside the licenced premises.

Transfer of licence on the death of licensee.

22. In the event of death of a licensee during the currency of the licence, the Commissioner may renew the licence on the same terms in favour of representative of the deceased if he is satisfied that such representative is fit on the condition that any arrears due from the deceased licensee are recovered before the licence is so renewed. In such case no fresh deposit shall be required.

Licensee to abide by the provision of Act, rules etc.

23. (1) Every licensee shall comply promptly with all orders or directions issued from time to time under the Act, Rules, Regulations and Orders made thereunder.(2) The licensee or his successors or his assignees shall have no claim whatsoever to the continuance of the licence after the expiry of the period for which such licence was granted.(3) When a licence is suspended or cancelled during the currency of the licence period or is not renewed on its expiry, the licensee shall forthwith surrender the whole stock of unsold foreign liquor to the Commissioner. The stock so surrendered shall be sold by the Commissioner and the proceed of the sale shall, after deducting the expenses and any sum due to the Government, be returned to the licensee.

Suspension or cancellation of licence.

24. A licence may be suspended or cancelled in accordance with the provisions of the Act, rules, regulations and orders made thereunder from time to time.

PRINCIPAL SECRETARY
EXCISE (ABK) DEPARTMENT
GOVERNMENT OF SIKKIM

Form No. I
(See rule 3)

APPLICATION FORM FOR FOREIGN LIQUOR BAR SHOP

Photo 3
(three) copies

To,

The Commissioner,
Excise (Abkari) Department,
Govt. of Sikkim,
Gangtok.

I beg to apply for licence under the provisions of Rule 3 of the Sikkim Excise (Licencing for Foreign Liquor Bar Shop) Rules, 2004.

My particulars and the details are enclosed as per the Enclosure I and II for kind consideration.

Thanking you.

Yours faithfully,

Signature of the Applicant
Name :.....
Address:.....
.....

ENCLOSURE I OF FORM I

1. Name of the applicant: .....
2. Occupation of the applicant: .....
3. (a) Place of Birth:.....
   (b)Date of Birth:.....
4. (a) Whether he is holding Sikkim Subject Certificate/Certificate of Identification, if so, copy of the certificate to be furnished.
   (b) If it is otherwise, documentary evidence proving that he is bonafide resident of the State of Sikkim be furnished.
5. Permanent Address in full:.....
   Village:.....
   P.O.:.....

Police Station:.....

District :.....

6. Present Address in full:.....

Village:.....

P.O.:.....

Police Station:.....

District :.....

7. Type of construction of proposed shop whether RCC or wooden structure:

.....

8. Whether proposed shop house is within the schedule to the Sikkim Excise (Prohibited sites for liquor shop) Rules, 1996.....

9. Whether proposed shop is to set up in rented premises. If so, NOC from the house owner to run the Liquor Shop for a period of four year by the applicant to be furnished.

10. If the applicant proposed to appoint salesman the details to be furnished as per annexure II.

11. Size of proposed shop premises (Length..... sq. ft, breadth..... sq. ft).

12. Details of the Excise Licence held in the previous year.

(a) Licence No:.....

(b) Kind of Shop: .....

(c) Place:.....

(d) District:.....

13. Whether any of the family members of the applicant was holding any Excise Licence during the last settlement/contract period.

(a) Licence No:.....

(b) Kind of Shop: .....

(c) Place:.....

(d) District:.....

I hereby declare that the aforesaid particulars are correct.

1. Signature: .....

2. Name: .....

3. Address:.....

.....

4. Date:.....

Enclosure II of Form I

APPLICATION FOR REGISTRATION OF BARMAN

(If the licensee proposes to appoint more than one barman, separate forms to be used for individual case)

To,

The Commissioner,
Excise (Abkari) Department,
Government of Sikkim,
Gangtok.

Subject: **REGISTRATION OF BARMAN**.

Sir,

I would like to request you to kindly register the person whose particulars are indicated below as Barman for my proposed Foreign Liquor Bar Shop located at _____.

1. Name:.....
2. Present Address in full:.....
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
3. Permanent Address in full.
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
4. (a) Place of Birth:.....
   (b) Date of Birth:.....
5. (a) Whether his a bonafide Sikkim Subject holder, if so a copy of Certificate to be furnished.
   (b) If it is otherwise, documentary evidence proving that he is a bonafide resident of the state of Sikkim to be furnished.

This is certified that the particulars as furnished above are correct and signature of the proposed Barman is as attested below.

Yours faithfully

Signature of the Proposed Barman

Date:.....

Signature of the Licensee

(Full name)

Enclosure III of Form I
REGISTRATION OF BARMAN

No.. .....Ex/Abk Dated:.....

Name of the Licensee:_____

Address:_____

Licence No._____

With reference to your application-dated _____, this is to inform you that Shri _____ has been appointed as BARMAN of your Foreign Liquor Bar shop till _____.

This Barman Registration Certificate issued by the Department **shall not be valid for any other purposes.**

COMMISSIONER/ EXCISE

EXCISE (ABKARI) DEPARTMENT
Form No. II
(See rule 4)

VERIFICATION REPORT

Ref. No. .....Ex/Abk Dated:.....

Sir,

With reference to application No. _____dated _____ on the case of Shri _____ S/o _____ resident of _____ for the grant of Excise licence to take undertake the retail business of Foreign Liquor Bar shop under the provisions of Sikkim Excise (Licencing for Foreign Liquor Bar Shop) Rules, 2004, I have conducted a detailed enquiry including spot verification and report is submitted below: -

1. The applicant is bonafide resident of the State (copies of Certificate enclosed) _____.
2. The applicant is neither a minor nor a Government employee.
3. The age of the applicant is _____ years.
4. The applicant is having sound integrity and he has not committed any crime under the provisions of the Sikkim Excise Act, 1992 in the past.

5. The shop is proposed to be opened at _____ bazaar which falls within the Schedule to the Sikkim Excise (Prohibited Sites for Liquor Shops) Rules, 1996. (A rough sketch showing the details of the proposed location including its surroundings is enclosed).

6. The proposed location is along the side of the road and is distinctly visible from the road. (This is applicable only in case of Foreign Liquor and Country Liquor retail shop).

7. The shop is proposed to be opened in his own house/rented house belonging to Shri/ Smt._____ and the same is RCC/Ekra with GCI enclosed.

8. The applicant has proposed to appoint Barman for running the shop and the particulars as Sikkim Excise (Licensing for Foreign Liquor Bar Shop) Rules, 2004.
The undersigned have verified all the details furnished by the applicant after spot verification and the case meets/ does not meet the requirement as laid down in the Sikkim Excise (Licensing for Foreign Liquor Bar Shop) Rules, 2004. Hence **recommended / not recommended** (as the case does not meet provision under condition No..... of the Rules).

Signature of the Verifying Officer
Name:
Designation:
Station

Encl: as above.

FORM III
(See rule 6 (1)

No._____/Ex(ABK) Dated_____

To
_____

_____

_____

Sub: **SETTLEMENT ORDER**.

Reference your letter application dated_____ requesting for Excise license for operating Foreign Liquor Bar Shop at your own house/rented house of Shri Smt._____ situated at _____ East/ North/South/West district has been approved and settled for a block period of 4 (four) years i.e. from 1st April, 2005 to_____. This settlement is subject to the provisions of the Sikkim Excise (Licensing for Foreign Liquor Bar Shop) Rules, 2004.

1. Payment of annual licence fee amounting to Rs._____ for the year _____ is to be deposited within 7 (seven) days from the date of issue of this order and Bank Receipt/ Challan after crediting the amount to major Head "0039 State Excise-800-Licence Fee" in the State Bank of Sikkim for the year_____ and Fixed Deposit Receipt as security money for a period of _____ year of the equivalent amount in favour of the Commissioner Excise should be made. In the event of your failure to do so, this approved settlement order shall stand automatically cancelled.

2. In order to maintain continuity of operation, all the concerned Excise Officer and Warehouse Officers of the Department have been endorsed a list of this order who in turn may issue the liquor in your favour only on production of proof of your having paid the necessary Licence Fee and the Security Deposit as required.

3. The original copy of the Bank Receipt/Challan and Security Deposit should be submitted to the Deputy Commissioner (E/N), Excise, Gangtok for East and North Districts. Similarly for South and West Districts, they should be submitted to the Assistant Commissioner, Excise, Jorethang. You may retain the Xerox copies of both the receipts as proof of having paid the amount and also taking out the liquors from the respective warehouse.

COMMISSIONER/EXCISE

Copy to:-

1. Deputy Commissioner (E/N), Excise/ Asstt. Commissioner (S/W), Jorethang with the direction to obtain the report from the concerned officer and report to higher authority.

2. I.E. Melli / Rangpo / Jorethang / Gangtok. With direction to report the undersigned through proper channel after opening of the shop positively.

3. S.I.E. Gangtok / Mangan / Namchi / Gyalshing / Pakyong/ Ravangla / Soreng.

4. Guard file.

COMMISSIONER/EXCISE

FORM IV
See Rule 18 (4)

Daily accounts register (In cases/bottles/pegs)

Date:_____

BRAND NAME	OPENING STOCK			FRESH RECEIPT OF THE DAYS			T.P. NO. & DATE IF ANY	TOTAL			SALE		CLOSING STOCK			INSPECTED By Name/Sig. & date	REMARKS
	C/S	BTS.	Pegs	C/S	BTS.	Pegs		C/S	BTS.	Pegs	C/S	BTS. Pegs	C/S	BTS.	Pegs		

Printed at Sikkim Government Press, Gangtok.